

BELL, McANDREWS & HILTACHK, LLP

ATTORNEYS AND COUNSELORS AT LAW

455 CAPITOL MALL SUITE 501

SACRAMENTO CALIFORNIA 95814

(916) 442-7757

FAX (916) 442-7759

**CHARLES H BELL JR
COLLEEN C McANDREWS
THOMAS W HILTACHK
BRIAN T HILDRETH
JIMMIE E JOHNSON
ASHLEE N TITUS**

**PAUL BOUGH
OF COUNSEL**

**1321 SEVENTH STREET SUITE 205
SANTA MONICA CA 90401
(310) 458-1405
FAX (310) 250-2555
www.bmhllaw.com**

October 24, 2007

**Ms Thomasina Duncan
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20543**

Re MUR No 5943

Dear Ms Duncan

This firm represents Californians for Equal Representation ("CER"), a qualified California state campaign committee that is primarily formed to support the qualification of California ballot measure no 07-0032¹. CER was identified by name (but not as a respondent) in a complaint filed with your office on October 3, 2007, by James Harrison of the law firm of Remcho, Johansen & Purcell, LLP, San Leandro, California. Mr Harrison's complaint was filed on behalf of Ursula Angell, "a California voter." Because there is absolutely no factual or legal basis for the complaint, we request the FEC take no further action against CER.

Mr Harrison's complaint is bereft of any "facts" and sets forth no basis whatsoever for its ill-defined "coordination" claim. He cites 11 C.F.R. § 109.20 and appears to allege that CER somehow coordinated its efforts with Mayor Rudy Giuliani's presidential campaign committee to qualify and/or enact the ballot measure at issue. One is left to infer that Mr Harrison's complaint with respect to CER concerns a monetary contribution received by CER from Take Initiative America ("TIA") Take Back America, a Missouri group that contributed \$175,000 to CER. Mr Harrison's primary evidentiary support for his "coordination" allegation are news newspaper articles which, not coincidentally, fail to show a scintilla of evidence that any coordination existed. To the contrary, these articles demonstrate that CER was unaware of the true source of the monetary contribution, despite its numerous attempts to obtain that information.

¹ Ballot Measure No 07-0032 would award 153 of California's electoral votes to the candidate who attains the plurality of votes cast in each of the State's 53 Congressional Districts and 2 of the votes to the candidate who attains the plurality of votes cast statewide.

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Upon receiving the TIA Take Back America contribution in August 2007, CER made repeated demands of the contributor to disclose the contribution's true source (See Complainant's Exhibit C) CER was assured on a number of occasions that the source would be disclosed Upon determining that the contributor's identity would not be disclosed, the committee's state campaign treasurer, Mr Thomas W Hiltachk (who also was the ballot measure's named proponent), immediately withdrew from CER (See Complainant's Exhibit C) Mr Hiltachk's "noisy" withdrawal was followed by the resignation of a number of others associated with CER (none of whom were at the time, or had ever been, affiliated with Mayor Giuliani's presidential campaign) The resignations and withdrawals effectively left CER dead

Mr Harrison's allegations against CER are based purely upon conjecture and are not supported by the facts of this case They are, under any analysis, false Complainant's fatal flaw is clearly demonstrable from the materials submitted with the Complaint Without knowledge of the putative contributor or coordinator, CER could not have knowingly "coordinated" with any campaign

Even assuming that Mr Paul Singer, the person who has since acknowledged making a contribution to TIA Take Back America, is an agent of Mayor Giuliani's presidential campaign committee – something both that campaign and Mr Singer have publicly denied – how could CER have coordinated with someone it could not even identify? This is the essential question left unanswered by Mr Harrison's baseless allegations The Complaint does not allege that CER or Mr Hiltachk communicated with anyone else who might be an agent of Mayor Giuliani's campaign, and in fact, neither CER nor Mr Hiltachk had any such communications

It is possible Mr Harrison's complaint is merely a smokescreen to cover-up possible improper coordination by Complainant and its agents It is obvious by the news articles cited by Mr Harrison (and one critical article apparently overlooked by Mr Harrison) and Complainant's agents admissions therein, Complainant and its agents either were agents of the Hillary Clinton for President Campaign and/or coordinated with that campaign and/or they coordinated with Senators Dianne Feinstein and Barbara Boxer, and/or with Howard Dean, Chairman of the Democratic National Committee, concerning this ballot measure

In a revealing report by the San Francisco Chronicle on October 7, 2007, the newspaper uncovered evidence that, "former spokesman for President Bill Clinton's White House," (Chris Lehane) and "a former chief of staff to three Clinton Cabinet secretaries" (Marge Sullivan) were the primary individuals behind the effort to derail the initiative measure (See CER Exhibit A) In addition, Doug Boxer, who is "the son of U S Sen Barbara Boxer contacted every major Democratic elected official from mayors to state legislators to California's U S senators and urged them to speak publicly against the Electoral College plan " (See CER Exhibit A, emphasis added) Moreover, the effort to defeat the initiative measure received "financial backing and commitments from deep-

Ms Thomasma Duncan
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pocketed donors like Nancy Parrish, a leading supporter of Sen Hillary Rodham Clinton's presidential campaign " Also, "Democratic National Committee Chairman Howard Dean flew to San Francisco for a press conference with labor leaders" to help defeat the measure (See CER Exhibit A) The San Francisco Chronicle article also makes clear that these agents considered this a preliminary skirmish between Hillary Clinton and the Giuliani campaign

As Mr Harrison so rightly points out, FEC regulations define "coordinated" as

[M]ade in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents
11 C F R § 109 20(a)

The admissions made by Complainant and its own agents are deafening If the FEC is to investigate any coordination involving this matter, it should investigate the apparent numerous coordinated activities between Complainant and its agents, and a number of federal officials, their campaign committees and/or their financial supporters

As the facts and supporting exhibits plainly demonstrate, there is absolutely no merit to Mr Harrison's allegations For the reasons set forth herein, Mr Harrison's complaint is without merit (and frivolous), and should not be allowed to proceed

Please feel free to contact us if you require any additional information or to request the preparation and submittal of a formal complaint against the Complainant, the two California Senators and the Hillary Clinton campaign

Very truly yours,



Brian T Hildreth

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 5943

NAME OF COUNSEL Brian T Hildreth, Esq

ADDRESS Bell, McAndrews & Hiltachk

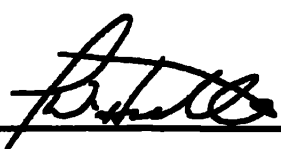
455 Capitol Mall, Suite 801

Sacramento CA 95814

TELEPHONE (916) 442-7757 / Facsimile (916) 442-7759

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission

DATE 10/24/07

SIGNATURE 

RESPONDENT'S NAME Californians for Equal Representation

RESPONDENT'S NAME Thomas W Hiltachk, Treasurer

ADDRESS 455 Capitol Mall, Suite 801

Sacramento CA 95814

TELEPHONE (916) 442-7757

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EXHIBIT A

State Dem group played hardball to kill GOP election system plan

Carla Mannucci, Chronicle Political Writer

Sunday, October 7, 2007



They called themselves "The Lincoln Brigade "

Even as Democrats feared having to spend as much as \$40 million for a bruising, bloody fight expected to drag on for months, this makeshift group of California Democratic operatives needed just weeks to pummel a Republican-funded push for a ballot measure that threatened to change the outcome of the 2008 presidential election

The ruthlessly effective battle plan of the California Democrats' group raises the specter that, as the 2008 election looms, Republicans may have to confront a far more aggressive Democratic ground game that has revived the old "Clinton war room" philosophy

"We need to fight back and not be reluctant - that if they come after you with a knife, to pull out a gun," said California Democratic strategist Chris Lehane, former spokesman for President Bill Clinton's White House and Vice President Al Gore's 2000 presidential campaign

The group took aim at the Presidential Election Reform Act, a proposed California ballot measure that would change the way the state apportions its Electoral College votes and likely benefit the Republican nominee

After two terms of Republican control of the White House - and angered by what they perceived as a history of electoral "dirty tricks" by GOP strategists such as President Bush's key adviser Karl Rove - the Democrats' response in California could serve as an indication of what lies ahead in the 2008 battle for the White House

"We ran it like a military operation," says Margie Sullivan, a former chief of staff to three Clinton Cabinet secretaries who was closely involved in the effort. "You had this SWAT team of talented, hyper-engaged people. It was boom, boom, boom."

Lehane and Sullivan are some of the lead players in the group, which includes many former insiders from the Clinton administration. They named their group after the brigade of American volunteers who fought against fascism in the Spanish Civil War.

After events such as the 2000 Florida presidential election recount, the 2003 California recall election that ousted Democratic Gov. Gray Davis, the 2004 "Swift Boat" campaign against Sen.

- John Kerry, "Democrats are waking up to reality," said Doug Boxer the son of U S Sen Barbara Boxer and a Bay Area consultant who was political director for the effort against the ballot measure

"It doesn't mean (Democrats are) jettisoning their values system but the Clinton administration played hardball on a lot of things, and we'd gotten away from that," Boxer said "We're back to the Clinton era "

Veteran California Republican strategist Dan Schnur conceded that the recent Democratic effort against the ballot measure was astonishingly effective But he argued that the result - Republican supporters have for the most part backed away from the measure - may have been due more to the high stakes and a hunger to get back into the White House than brilliant campaign strategy

"There's an old saying Nothing concentrates your attention like the prospect of your own destruction," Schnur said "They correctly identified this as a mortal blow to their Electoral College prospects next year If they hadn't mobilized with everything they had, they would have been signing their own death warrant "

Interviews with lead players in the effort last week reinforced that scenario Democrats from local to national levels shifted into gear almost as soon as rumors surfaced in May that Republicans might try to "steal the election" in the Democratic-leaning state with a ballot measure to benefit the GOP nominee

Instead of the winner-take-all system used in all but two states, the measure provided that 53 of California's 55 electoral colleges votes would go one-by-one to the presidential candidate who wins each of the state's 53 congressional districts

Analysts said such a change could swing about 20 of California's Electoral College votes - about as many as key states such as Ohio and Pennsylvania - from the Democratic candidate, who would be favored to win the statewide popular vote, to the Republican candidate who could win Republican-dominated congressional districts

By the time the GOP-backed group called "Californians for Equal Representation," led by attorney Thomas Hiltachk - who has represented Gov Arnold Schwarzenegger and the state GOP - submitted the ballot measure to the state attorney general's office on July 17, the ad-hoc Democratic group was already engaged in a flurry of action

Lehane had contacted Sullivan and Tom Steyer, a longtime major party donor and lead fundraiser for Kerry who heads San Francisco-based Farallon Capital

"He said, 'We've got to stop this - now' and immediately kicked in \$150,000," Lehane recalled

They roused a crew of part-timers including Peter Ragone, longtime aide to San Francisco Mayor Gavin Newsom, who acknowledged that many believed the GOP effort was a longshot

But "we'd seen that movie before," Ragone said "We had learned that when Republicans start with these shenanigans, you have to hit them hard Our attitude was Not in our state "

The goal, Sullivan said, was to "strangle the baby in the cradle" and kill the ballot measure early, rather than let it qualify for the ballot - where it would be much tougher and more expensive to beat

As the campaign in favor of the measure prepared to circulate the petitions and get the voter signatures needed to qualify it for the ballot, Doug Boxer contacted every major Democratic elected official from mayors to state legislators to California's U S senators and urged them to speak publicly against the Electoral College plan

Steyer and Sullivan hit the phones, rounding up financial backing and commitments from deep-pocketed donors like Nancy Parrish, a leading supporter of Sen Hillary Rodham Clinton's presidential campaign and Hollywood producer Norman Lear, who put up \$50,000 Also at the ready producer Steven Bing and major Democratic donor and developer Walter Shorenstem, Sullivan said

Pollster Paul Mashin's early focus groups found that a slim majority of Californians initially backed the Republicans' call for an end to "winner take all," so the Democrats began a daily drumbeat aimed at the media - press conferences, meeting with the state's leading editorial boards and outreach to Internet Web sites and blogs

The Democrats wanted to "tell our side of the story" additionally through TV and radio ads to erode public support and scare off potential GOP donors, Lehane said

At one point, "Norman Lear pitched in on a script change," Lehane said "That made us nervous it's was kind of like Picasso giving you advice on painting "

Frank Russo, publisher of the California Progress Report, a popular Democratic Web site, said the strategy achieved "a clarion call that went out to all the troops," prompting netroots activists such as the Courage Campaign and Daily Kos loyalists to pound the issue to the grassroots "It was like the old Who song We won't get fooled again," he said

Democratic National Committee Chairman Howard Dean flew to San Francisco for a press conference with labor leaders to "make it very clear from the beginning that the new Democratic Party is not going to take it lying down - we still stand and fight," said DNC spokesman Karen Finney

Editorial boards lined up against the measure. Then came a turning point - Schwarzenegger's public slap at the measure, which he said suggested a "loser mentality" by his party and an attempt to change election rules in the middle of the game.

Democrats still felt they had a big challenge unmasking the money people behind Hiltachk's group - which by early September had said it had collected 40,000 signatures to put the measure on the June 2008 ballot.

Many of the original backers of the GOP ballot measure also were supporters of GOP presidential candidate Rudy Giuliani. Then came the news that the single \$175,000 contribution to Hiltachk's Sacramento group was from a separate organization run by a Missouri GOP attorney named Charles Hurtt III - another Giuliani donor. But Hurtt's group wouldn't reveal its donors.

Democratic attorney James Harrison announced the party would file a complaint with federal election officials alleging money laundering - and the state's Fair Political Practices Commission acknowledged looking into the issue.

Quickly, the GOP ballot measure drive collapsed. Hiltachk resigned - as did his group's spokesman, Kevin Eckery and the chief fundraiser, Marty Wilson. They said they didn't want to accept money from anonymous donors - and support and funding had dried up for the measure.

In the last week, the money man behind the Missouri group was revealed to be Giuliani policy adviser and top fundraiser, billionaire New York hedge fund executive Paul Singer. That has prompted Harrison to pledge that Democrats will continue demanding answers regarding Giuliani's links to the effort - right into the 2008 primary season.

Eckery, the former spokesman for the ballot measure group, said that while the experience served as "a tune-up for the Clinton machine in California," Democrats shouldn't get overconfident from the result.

"Politics is a contact sport," he said, "and the presidential election is the Super Bowl."

Cast of characters

Some of the key Lincoln Brigade players and their Clinton connections:

Chris Lehane: former White House spokesman for President Bill Clinton and 2000 spokesman for Al Gore's presidential campaign. Lehane is supporting Hillary Rodham Clinton's presidential effort.

Doug Boxer: consultant and son of U.S. Sen. Barbara Boxer of California.

Tom Steyer: founder of San Francisco's Farallon Capital Management, one of Sen. Clinton's

biggest donors and a leading fundraiser for 2004 John Kerry campaign

Margie Sullivan: Farallon Capital management analyst, Democratic fundraiser and former chief of staff to three U S Cabinet secretaries during the Clinton administration

Ari Swiller: Democratic fundraiser and "kitchen cabinet" insider of Los Angeles Mayor Antonio Villaraigosa, a Hillary Clinton backer

Peter Ragone: a former aide in the Clinton administration and Gore spokesman He is former spokesman for San Francisco Mayor Gavin Newsom, a Clinton endorser

Bill Carrick: longtime Democratic strategist for U S Sen Dianne Feinstein, who has endorsed Hillary Clinton

Paul Maslin: veteran Democratic pollster, formerly for Democratic National Committee Chairman Howard Dean and now for New Mexico Gov Bill Richardson, a Democratic presidential candidate

Sean Sullivan: opposition researcher formerly with the San Francisco firm of Averell "Ace" Smith, who is now Hillary Clinton's California campaign manager

E-mail Carla Marinucci at carlamarinucci@sfgate.com

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This article appeared on page A - 1 of the San Francisco Chronicle

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